IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.51 OF 2006

The Commissioner of Customs
(Preventive) ..Appellant

Vs.

Shri Sadashiv R.Lele ..Respondent

Ms.S.V.Bharucha for the Appellant.
Mr.N.S.Thakkar with Mr.I.M.Ahuja for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
V.C.DAGA, JJ.

DATE : 28TH MARCH, 2007

P.C.

1. Heard the learned Counsel for the parties. By the above Appeal, the Appellant is seeking to raise the following substantial question of law:-

> A) Whether on the facts and in the circumstances of the case and in law Hon'ble CESTAT is right in holding that onus is on the Revenue to prove that Indian currency under seizure cannot be confiscated under the provisions of Customs Act having regard to the fact that the Respondent himself confessed that the same was the sale proceeds of smuggled foreign made liquor and cigarettes?

2. We have perused the order of the Commissioner of Customs dated 23rd February,1998 and also the order of CESTAT dated 25th May,2005. A perusal of both the orders do not indicate that both the Commissioner of Customs as well as the CESTAT had proceeded on the basis of the confessional statement of Mr.S.R.Lele and

did not rely upon the said confessional statement and thereby benefit of doubt was given. However, the said statement was made under Section 108 of the Customs Act. There is nothing on record to indicate as to on what basis the same cannot be relied upon.

3. The learned Counsel for the Respondent pointed out that the finding was given on the basis that the said confessional statement was retracted by Mr.S.R.Lele. However, both the orders passed by the Commissioner of Customs as well as the CESTAT do not indicate at all that they had taken into account such a statement of retraction. Under these circumstances, we quash and set aside both the aforesaid orders and remand back the matter to the Commissioner of Customs for reconsideration of the entire issue afresh.

Appeal is allowed accordingly.

(V.C.DAGA,J.) **(DR.S.RADHAKRISHNAN,J.)**